

# STATE ATTORNEYS GENERAL

## A COMMUNICATION FROM THE CHIEF LEGAL OFFICERS OF THE FOLLOWING STATES:

NEW HAMPSHIRE • CONNECTICUT • MAINE • MASSACHUSETTS • NEW YORK • RHODE ISLAND • VERMONT

April 22, 2003

Honorable Christine Todd Whitman, Administrator  
United States Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code 3213A  
Washington, DC 20460

Re: Hubbard Brook Report on Nitrogen Emissions: Preliminary Comment on Proposed  
Expansion to Routine Maintenance Exemption (Docket No. A-2002-04)

Dear Administrator Whitman:

We write to alert you to a compelling study on nitrogen pollution that was published in the April 15, 2003 issue of the journal *Bioscience*. We urge the U.S. Environmental Protection Agency (EPA) to carefully consider this new scientific evidence in the context of recent regulatory initiatives under the New Source Review provisions of the Clean Air Act ("Act") and in the context of proposed amendments to the Act.

The study, *Nitrogen Pollution in the Northeastern United States: Sources, Effects, and Management Options* (copy attached), which was compiled by twelve leading scientists convened by the Hubbard Brook Research Foundation, documents the continuing damage to northeastern ecosystems from airborne emissions of nitrogen oxides (NO<sub>x</sub>). The Hubbard Brook study clearly demonstrates that this trend cannot be reversed without aggressive reductions in electric utility emissions.

In particular, the study demonstrates that northeastern forests, lakes and streams are being harmed by airborne NO<sub>x</sub> emissions, electric utilities being one of the largest sources of these emissions. The damage documented in the study includes diminished forest productivity of up to 14% from nitrogen-induced ozone and harmful levels of acidity in 41% of lakes in the Adirondack region of New York and 15% of lakes in New England.

The study also concludes that atmospheric levels of nitrogen have remained constant in the northeast since the 1960s, despite recent amendments to the Act, and that the most recent amendments to the Act will not reduce nitrogen emissions enough to prevent continuing damage to our natural resources. This new evidence highlights the need for dramatic reductions in NO<sub>x</sub> emissions from electric utilities located upwind from our states.

We are very concerned that, despite the good science that supports the pressing need for more NOx reductions from upwind utilities, recent EPA initiatives will hamper any efforts to reduce emissions from these sources. For example, EPA recently issued both final and proposed changes to long-standing and effective New Source Review regulations, which will relax controls on the most polluting, upwind sources. We have challenged the final rules in federal court and we are in the process of preparing highly critical comments on the proposed expansion to the "routine maintenance, repair and replacement" exemption from New Source Review. The results of the Hubbard Brook study confirm that our aggressive stance in both litigation and administrative proceedings on these issues is warranted.

Similarly, we are concerned that proposed amendments to the Act supported by EPA would not achieve sufficient or timely reductions in NOx emissions from the highest emitting utilities, which are upwind of our states and are largely responsible for the airborne nitrogen pollution entering our boundaries. We urge you to carefully consider the Hubbard Brook study in your review of the various legislative proposals pending before Congress.

We ask that you include a copy of this letter, along with the attached Hubbard Brook study, in the rulemaking docket for the proposed expansion to the "routine maintenance, repair and replacement" exemption to New Source Review (Docket ID No. A-2002-04). Please deem this as a precursor to the more detailed comments we will submit on that proposal.

Sincerely,



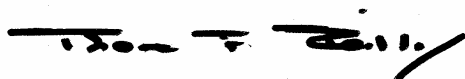
Peter W. Heed  
NEW HAMPSHIRE ATTORNEY GENERAL



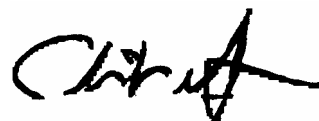
Richard Blumenthal  
CONNECTICUT ATTORNEY GENERAL



G. Steven Rowe  
MAINE ATTORNEY GENERAL



Thomas F. Reilly  
MASSACHUSETTS ATTORNEY GENERAL

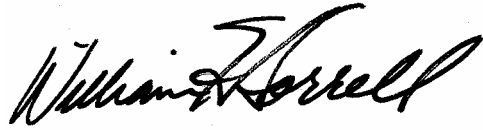


Eliot Spitzer  
NEW YORK ATTORNEY GENERAL

Honorable Christine Todd Whitman  
April 22, 2003  
Page 3

A handwritten signature in black ink, reading "Patrick C. Lynch". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Patrick C. Lynch  
RHODE ISLAND ATTORNEY GENERAL

A handwritten signature in black ink, reading "William H. Sorrell". The signature is cursive and compact, with a distinct loop at the end.

William H. Sorrell  
VERMONT ATTORNEY GENERAL

Attachment